

With regard to the provision of shipper witnesses at a hearing, we believe that it is most problematic for the smaller Applicants who desire a very limited scope of authority.

Our Regulation 103-101(2) states that our rules are subject to such exceptions as may be considered just and reasonable as ordered by the Commission when strict compliance with any rule or rules produces unusual difficulty and is not in the public interest. We hold that a waiver of the “shipper witnesses” requirement in Regulation 103-133(1) should be granted for Applicants who propose to transport household goods for hire between points and places in three or fewer counties in South Carolina. We note that under S.C. Code Ann. Section 58-23-590 (Supp. 1998), the public convenience and necessity criterion must still be proven through some means before we can grant a Certificate of Public Convenience and Necessity. Our only intent is to waive the “shipper witnesses” methodology of proving that criterion for those who wish to transport household goods between points and places in three or fewer counties in the State. We believe that strict compliance with the “shipper witnesses” regulation produces unusual difficulty for these smaller carriers who are requesting a limited scope of authority, and that holding these carriers to strict compliance with this regulation is simply not in the public interest.

We also believe that it is appropriate to address the difficulty that some Applicants are having in understanding the meaning of the “shipper witnesses” term, and the accompanying law. Although we realize that the Commission Staff has made a good effort to attempt to educate Applicants on this matter, we hold that additional steps should be taken in the form of modification of the standard explanatory letter that Applicants for household goods authority receive. Obviously, pursuant to the above-described waiver, this modified letter would not go to Applicants seeking authority to

transport household goods between points and places in three or fewer counties in the State, but would go to all other Applicants for household goods authority, and, as stated below, would attempt to further explicate the term “shipper witnesses,” and the law in which the term has its genesis. We believe that the explanatory letters should contain the following language:

S.C. Code Ann Section 58-23-590 (Supp. 1998) provides in part that
(C) The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission’s regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirement of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

Regulation 103-133 sets forth with particularity the requirements that an applicant must demonstrate in order to demonstrate “fit, willing, and able.” See, 26 S.C. Code Regs. 103-133(1) (Supp. 1998), a copy of this regulation is attached hereto.

26 S.C. Code Regs. 103-133(1) also provides in relevant part that “[t]he public convenience and necessity criterion must be shown by the use of shipper witnesses.” The term “shipper witness” is not defined in the regulation, but the term “shipper witness” refers to a witness who can support the testimony of the applicant regarding the need for additional services in an area. Under statute 58-23-590, the applicant must prove that the “proposed service ... is required by the present public convenience and necessity.” While an applicant will testify that his services are needed in an area, the shipper witnesses are used to present supporting testimony that the services are in fact needed.

Generally, a shipper witness includes, but is not limited to, a person who books, attempts to book, or controls the shipment of goods. In the context of providing supporting testimony regarding the present state of public convenience and necessity, a shipper witness is someone who, through first hand knowledge, is familiar with the availability, or unavailability, of moving services in an area. First hand knowledge should

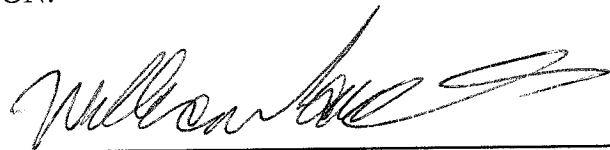
come from either requiring moving services personally or from booking moving services for a company or business, such as a relocation officer for a company. To properly address the public convenience and necessity criterion, a shipper witness should be able to present testimony concerning efforts to obtain moving services and the relative ease or difficulty in obtaining moving services from existing carriers in area or areas proposed to be served by the applicant. While a shipper witness may have used the services of the applicant and may testify to satisfaction with the applicant's services, testimony regarding the applicant's service and satisfaction with those services goes more to the "fitness" of the applicant rather than to the issue of public convenience and necessity.

Further, testimony of the shipper witness(es) must address the "present public convenience and necessity." (Emphasis added.) In other words, testimony should relate to recent events or incidents and should not focus on events that are distant or remote in time.

It appears to us that this language, though not necessarily all inclusive, gives a good explanation of the law in this area. We certainly believe that the language will give reasonable guidance on the requisite law to those applying for household goods authority. We hereby officially adopt this language for our explanatory letters to the requisite Applicants.

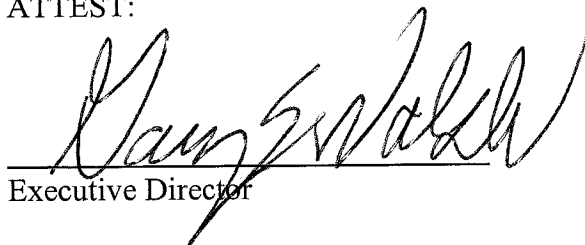
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Vice Chairman

ATTEST:


Executive Director

(SEAL)